

# EXHIBIT C

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
SITEONE LANDSCAPE SUPPLY, :  
LLC, : 23-CV-2084 (GRB) (SIL)  
Plaintiff, :  
:  
February 10, 2025  
:  
V. :  
:  
Brooklyn, New York  
:  
NICHOLAS GIORDANO, et al., :  
:  
Defendant. :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING  
BEFORE THE HONORABLE STEVEN I. LOCKE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE CLERK: Calling case 23-CV-2084, Siteone  
2 Landscape Supply, LLC v. Giordano, et al.

3 Counsel, please state your appearance for  
4 the record.

5 MR. GIBBS: Good afternoon, your Honor.  
6 This is John Gibbs. I'm here for plaintiff Siteone,  
7 and with me are my colleagues, Mr. Daniel Gorman and  
8 Kevin Mulry as well.

9 THE COURT: And you'll be doing the talking?

10 MR. GIBBS: Yes, your Honor.

11 THE COURT: Okay. Good morning.

12 MR. MULE: Good morning, your Honor.

13 Michael Mule for the defendants from the firm Milman  
14 Labuda Law Group, PLLC, with my colleagues, Joe Labuda  
15 and Bob Milman.

16 THE COURT: And you'll be doing the talking,  
17 Mr. Mule?

18 MR. MULE: I will, your Honor.

19 THE COURT: All right, good morning. Be  
20 seated, everybody.

21 We've got some motions on the agenda for  
22 today. There's a motion I guess for sanctions or  
23 discovery relief, docket entry 185 and opposition at  
24 188. And then defendants filed another motion Friday,  
25 to which I don't have a response, probably because it

1 MR. MULE: We estimate around \$900,000.

2 THE COURT: All right, so significant  
3 amounts of money in a case where no ESI protocol was  
4 addressed, and things were just free-flowing. You can  
5 probably guess that that may be my opinion as to why  
6 some of this has gone int his direction.

7 Mr. Gibbs, is the defendants' statement  
8 accurate in these opposition papers at footnote 2,  
9 where he says they've offered you a copy of the hard  
10 drive from Dom's phone and you did not take it?

11 MR. GIBBS: The offer was made, yes, your  
12 Honor. We did not take it. The representation to us  
13 was that the hard drive was unusable, so we saw no  
14 reason to second-guess -- they said they've had a  
15 vendor, a forensic vendor or possibly even two look at  
16 the hard drive. So I'm taking them at their word --

17 THE COURT: Okay.

18 MR. GIBBS: -- the attorneys at their word  
19 that it's unusable.

20 THE COURT: That's my next question. So  
21 you'll accept their representation that it's unusable.

22 MR. GIBBS: Yes, your Honor.

23 THE COURT: Mr. Mule, I'm curious to know  
24 the answer to this question: How do you reconcile the  
25 statements in your opposition that Vic deletes evidence

1   apparently because he's old and compulsive, and Dobbs  
2   evidence is simply missing, with an objection to  
3   document-retention-based discovery requests by the  
4   plaintiff?

5                   MR. MULE:   I'm sorry, with an objection to?

6                   THE COURT:   They said they want to take  
7   depositions about document retention and you are  
8   objecting to that.

9                   MR. MULE:   Your Honor, our objection is  
10   really --

11                  THE COURT:   Make sure you're at the mic. I  
12   don't care -- you can stand if you want.

13                  MR. MULE:   -- is really simply that in our  
14   view, this case should move forward. We'll give them  
15   more time. They can ask those questions at the  
16   deposition. If they feel that it would take another  
17   two hours --

18                  THE COURT:   That's not the problem. The  
19   problem is, they're going to say they don't have all  
20   the documents they need to do a complete deposition of  
21   your clients, so they want to know what happened to  
22   those documents in the first instance. Then if it  
23   becomes clear from the testimony that there are more  
24   documents that are relevant and not produced, they're  
25   going to ask for those to complete the depositions.



1 Does that sound like a fair summary, Mr.  
2 Gibbs?

3 MR. GIBBS: Yes, your Honor, I think that's  
4 correct.

5 THE COURT: So with that understanding of  
6 the order of things, do you still object to those  
7 depositions?

8 MR. MULE: Well, I don't know what the -- as  
9 far as, you know, with Vic, we've identified that Vic,  
10 because of his compulsion, that's what he does.

11 THE COURT: You don't find that troubling  
12 from a litigation perspective?

13 MR. MULE: Well, your Honor --

14 THE COURT: You see how the Court could find  
15 that troubling from a litigation perspective.

16 MR. MULE: Obviously, your Honor, we would  
17 say, hey, don't do that, that shouldn't have been done.  
18 However, with respect to -- with respect to Dom, you  
19 know, this is just a situation where, you know, he just  
20 didn't know that this was --

21 THE COURT: Let's talk about that.

22 MR. MULE: Yeah.

23 THE COURT: When you buy an iPhone, it's not  
24 set to delete my texts after three days. Somebody has  
25 to set that. I assume Dom set that on his phone at

1 some point. It may have been before the litigation but  
2 I assume he set it. Did you ask him?

3 MR. MULE: Yeah. He doesn't even know, I  
4 don't believe, your Honor. I mean, it could have been  
5 something that was set at the iPhone store when he got  
6 it. He had an older phone at the time.

7 THE COURT: Well, do you suppose that  
8 perhaps the answers to those questions might be  
9 appropriate for a deposition?

10 MR. MULE: Sure. They could certainly ask  
11 those questions.

12 THE COURT: Okay. Well, here's where I'm  
13 going. I'm prepared to grant their motion with respect  
14 to conducting document-retention discovery of your  
15 three clients. If you want to object, now is the time.  
16 I mean, you objected in the papers but I'd like to hear  
17 something about that if you have something to say.

18 MR. MULE: If your Honor is so inclined to  
19 do that, obviously your Honor -- we just --

20 THE COURT: Well, I know I can do it.

21 MR. MULE: The only thing we're saying is  
22 that we believe that for efficiency purposes -- you  
23 know, this case is really about Dom competing and in  
24 our view, there hasn't been any evidence of Dom  
25 competing. So why don't we get into the substance?

1 would the introductory correspondence be relevant? The  
2 non-compete doesn't prevent you from getting ready to  
3 compete, does it? It only prevents you from actually  
4 competing.

5 MR. GIBBS: Well, he may have been competing  
6 before. That's our position, your Honor, is that Dom  
7 has been competing the entire time. He has been  
8 working with them.

9 THE COURT: Okay, let's approach this this  
10 way then? Why don't you take the old phone and if  
11 there's any evidence on it that leads you to believe  
12 that there's something nefarious on the new phone, we  
13 can talk about it.

14 MR. GIBBS: That's fair, your Honor.

15 MR. MULE: Your Honor, as far as the old  
16 phone, he doesn't have his old phone. He's got -- we  
17 have the -- we have the hard drive and we have the  
18 extraction that we did with respect to his old phone.

19 THE COURT: And the old phone is the same  
20 phone number?

21 MR. MULE: Yeah, it's the same phone number,  
22 so everything was transferred.

23 THE COURT: All right, you can have all of  
24 what they have. Whatever they have, you can have, new  
25 phone, hard drive, if he doesn't have the old phone.



1 And you can depose him on getting rid of the old phone  
2 after litigation started. I have no idea what the  
3 technology would show.

4 MR. GIBBS: I could tell you now, your  
5 Honor, if we don't have the old phone, there's not  
6 going to be anything to forensically analyze. And if  
7 that was discarded in October of 2024, that was after  
8 our motions to compel were filed with this Court and  
9 around the time that we had a hearing on the text  
10 messages for Dom's phone. We can certainly depose him  
11 about this, your Honor, but I don't anticipate that  
12 there will be --

13 THE COURT: Let's conduct the deposition.  
14 Why did he get rid of the phone after litigation  
15 started to get a new phone?

16 MR. MULE: It was time for an upgrade.

17 THE COURT: I'm not saying why did he get a  
18 new phone but why did he discard the old phone when  
19 getting the new phone?

20 MR. MULE: It was a trade-in. I mean, it  
21 was a trade-in. He got his --

22 THE COURT: After litigation started.

23 MR. MULE: First, he got the phone extracted  
24 from us and then after he got it extracted --

25 THE COURT: Did he know about it when it

1 happened?

2 MR. MULE: Right around the time after --  
3 after he got his phone extracted.

4 THE COURT: He'll have to answer questions  
5 about this. That's a problem. You know, there's only  
6 so much (ui) destruction of evidence that the Court is  
7 going to tolerate. All right, so --

8 MR. MULE: Your Honor, his entire phone, he  
9 had a forensic copy in July of 2023. So, you know --

10 THE COURT: So it's up to him when he can  
11 get rid of the evidence and not the Court. That's what  
12 you're telling me because that's what I'm hearing.

13 MR. MULE: No, your Honor. What he did is,  
14 he felt bad. He had everything preserved.

15 THE COURT: He felt he had done an adequate  
16 job without notice to the Court or his adversary that  
17 he was getting rid of a phone with potentially relevant  
18 information on it. I don't see any other conclusion to  
19 draw. And what you're telling me is not comforting.

20 UNIDENTIFIED SPEAKER: With all due respect,  
21 your Honor --

22 THE COURT: No, he's talking. Pass him a  
23 note and don't "all due respect" me, please.

24 UNIDENTIFIED SPEAKER: Sorry, your Honor.

25 THE COURT: Yes.

1 MR. MULE: Your Honor, from my client's  
2 perspective, all he felt was that once he gave it to  
3 one expert to make a copy, that he took reasonable  
4 steps. And then when we had the extraction again in  
5 October, at that point, he had taken reasonable steps  
6 because he took steps back in 2023 and then again, his  
7 phone was extracted in 2024.

8 THE COURT: So my conclusion is the same,  
9 that he decided what was appropriate on his own,  
10 without notice to anybody, including the Court.

11 MR. MULE: He thought --

12 THE COURT: Yes or no?

13 MR. MULE: He thought he was taking  
14 reasonable steps. I guess that's all I have.

15 THE COURT: Okay, all right. So whatever  
16 they've got, you'll depose him on it, and we're going  
17 to be where we're going to be. We can't regenerate  
18 something we don't -- don't have.

19 MR. GIBBS: Yes, your Honor.

20 THE COURT: Okay. So most of it's granted  
21 in terms of, you'll take the depositions, you'll get  
22 whatever they have in terms of phones. You will have a  
23 conversation with them about what this forensic  
24 examination will look like before it's done, not after  
25 it's done, so that if they have an objection, they can